



October 30, 2000

Mr. Brad Neighbor  
First Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2000-4206

Dear Mr. Neighbor:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID # 141199.

The City of Garland (the "city") received a request for law enforcement records pertaining to a particular individual during a specified time interval. You claim that portions of the requested records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that some of the requested records are confidential under section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201 provides in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We believe that the records in question consist of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the investigating agency has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, the information in question is confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). We have marked the records that the city must withhold under section 552.101 in conjunction with section 261.201 of the Family Code.<sup>1</sup>

You claim that the rest of the information in question is excepted from disclosure under section 552.101 in conjunction with the common law right of privacy. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from disclosure under section 552.101 in conjunction with common law privacy when (1) the information in question is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See Industrial Found.*, 540 S.W.2d at 685. The matters considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimacy, psychiatric treatment, attempted suicide, and injuries to reproductive organs. *See* 540 S.W.2d at 683; *see also* Open Records Decision No. 659 at 5 (1999). Upon careful review, we conclude that a portion of one document must be withheld from disclosure under section 552.101 in conjunction with common law privacy. We have marked that information.

We also have marked a social security number that may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if that information was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the social security number in question was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number in question was obtained or is maintained pursuant to such a law and is therefore confidential under section 405(c)(2)(C)(viii)(I)

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<sup>1</sup>We note that if the investigation has been referred to the Department of Protective and Regulatory Services (the "department"), a parent who is a requestor may be entitled to access to the department's records. Section 261.201(g) of the Family Code provides that the department, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

of the federal law. We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing the social security number that we have marked, the city should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

The submitted records also contain motor vehicle record information that must be withheld under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a). You must withhold the Texas driver's license number that we have marked in accordance with section 552.130.

In summary, some of the submitted records are confidential and must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The remaining records contain information that must be withheld under section 552.101 in conjunction with common law privacy; motor vehicle record information that must be withheld under section 552.130; and a social security number that may be confidential under section 552.101 in conjunction with federal law. The submitted records that are not excepted from disclosure under sections 552.101 or 552.130 must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the

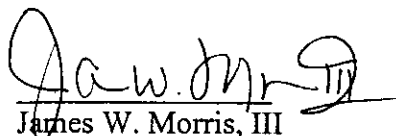
following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/seg

Ref: ID# 141199

Encl. Submitted documents

cc: Ms. Laura Hendrix  
2118 Randi Road  
Rowlett, Texas 75088  
(w/o enclosures)